

**STATE OF INDIANA  
BEFORE THE ALCOHOL & TOBACCO COMMISSION**

**IN THE MATTER OF  
THE PERMIT OF:**

**OAKLAND LANES, INC.  
D/B/A OAKLAND LANES  
2727 OAKLAND AVE.  
ELKHART, IN 46517**

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**PERMIT NO. RR20-19545**

**Applicant.**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. BACKGROUND OF THE CASE**

Oakland Lanes, Inc. d/b/a Oakland Lanes ("Applicant" or "Permittee"), 2727 Oakland Ave. Elkhart, Indiana ("permit premises"), permit number RR20-19545, pro se, is the Applicant for a renewal of a 112 Alcohol and Tobacco Commission ("ATC" or "Commission") beer and wine permit. The application was assigned to the Alcoholic Beverage Board of Elkhart County ("Local Board"). The Local Board held a hearing on January 21, 2010 ("LB Hearing") and voted two (2) to one (1) to approve the application. The Commission reversed the Local Board's recommendation on February 2, 2010, and voted four (4) to zero (0) to deny the permit renewal at its regular public meeting.

The Applicant filed a timely Notice of Appeal and the matter was assigned to ATC Hearing Judge E. Edward Dunsmore ("Hearing Judge"). An appeal hearing was held on May 3, 2010, ("Appeal Hearing") and at that time, witnesses were sworn, evidence was received and the matter was taken under advisement. The Hearing Judge, having reviewed the documents from the LB Hearing, the evidence submitted to the ATC during the Appeal Hearing, and the contents of the entire ATC file, as well as having taken official notice of the same, as well as the codes and standards adopted by this state, now tenders his Findings of Fact and Conclusions of Law to the Commission for its consideration.

**II. PROCEDURAL HISTORY**

1. On August 25, 2009, Applicant filed its Application for a Renewal of Permit.
2. On January 21, 2010, the Local Board held a hearing and voted two (2) to one (1) to approve the application.
3. On February 2, 2010, the ATC reversed the Local Board's recommendation and denied the permit renewal by a vote of four (4) to zero (0).
4. On February 12, 2010, the Applicant timely filed its request for administrative review and request for appeal hearing within the fifteen (15) day deadline required by 905 IAC 1-36-2.
5. No remonstrators filed a petition for intervention, as required by 905 IAC 1-36-2.

6. On May 3, 2010, the Hearing Judge conducted a hearing regarding the Applicant's appeal.

### **III. EVIDENCE BEFORE THE LOCAL BOARD**

- A. The following individuals testified before the Local Board in favor of the Applicant in this case:

1. Kenneth Jackson, President of Applicant and Permittee.

- B. The following individuals testified before the Local Board against the Applicant in this cause:

- None. However, since this was a renewal of an existing permit, the local board conducted questioning to assure that the requirements for renewal were met.

- C. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:

- None.

- D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:

- None. However, the LB referenced the fact that the permit premises had failed Survey of Alcohol Compliance (SAC) checks twice.

### **IV. EVIDENCE BEFORE THE COMMISSION**

- A. The following individuals testified before the Commission in favor of the Applicant in this cause:

1. Kenneth Jackson, President of Applicant and Permittee.
  2. Beverly Houck, daughter of Kenneth Jackson and 12.5% Owner of Applicant and Permittee.

- B. The following individuals testified before the Commission against the Applicant in this cause:

- None

- C. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:

1. Exhibit A, consisting of a letter from Verlin T. Houck, M.D. (husband of Beverly Houck who is the daughter of Kenneth A. Jackson and a 12.5% owner of Applicant and Permittee) stating that on January 20, 2010 (the day before the LB Hearing) Kenneth A. Jackson (President of Applicant and Permittee) was seen for a viral upper respiratory infection and bilateral serous otitis, and had symptoms of upper respiratory congestion, fatigue and reduced hearing.
2. Exhibit B, in nine (9) parts, consisting of letters from customers, friends, a former competitor, and professionals strongly supporting Oakland Lanes bowling alley and the proprietor Kenneth Jackson.
3. Exhibit C, in eleven (11) parts, consisting of a petition stating that each signatory is a customer and that Kenneth Jackson is a dedicated, committed, hardworking, hands-on business owner who is knowledgeable of the day-to-day operations of the business of Oakland Lanes.
4. Exhibit D, consisting of a thank-you letter/card from the Heart City USBC for hosting the women's city bowling tournament.

D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:

1. All written documents from the Local Board hearing and the entire contents of the ATC file.

## **V. FINDINGS OF FACT**

1. Oakland Lanes Inc., d/b/a Oakland Lanes ("Applicant", or "City Tavern"), located at 2727 Oakland Ave., Elkhart, Indiana 46517, is an applicant for a renewal of ATC type 112 beer and wine permit under permit #RR20-19545. (ATC File)
2. On Monday August 10, 2009, at approximately 7:45 p.m., Indiana State Excise Police Officers Nicholas Canal and Brandon Thomas conducted an Alcohol Compliance Project check at Oakland Lanes, Inc., d/b/a Oakland Lanes, located at 2727 Oakland Avenue, Elkhart, Indiana. The premises had previously failed an Alcohol Compliance Survey check resulting in a re-inspection of the permit premises. (ATC File)
3. On the above date, time and location, Indiana State Excise Police Officer Brandon Thomas escorted a minor (Minor Nathan), DOB 05/26/89, age 20 male, into Oakland Lanes. Officer Thomas observed Minor Nathan walk into the barroom area. The bartender, later identified as Fred Rieth, DOB 10/18/52, asked Minor Nathan what he wanted to drink. Minor Nathan stated that he wanted a Bud Light beer. Mr. Rieth then placed a 12 ounce can of Bud Light on the bar in front of Minor Nathan. Minor Nathan handed Mr. Rieth \$2.50 to complete the sales transaction. Officer Thomas informed Minor Nathan that it was time to leave the premises and both did so the permit premises. (ATC File)
4. Officers Thomas and Canal returned to the permit premises on that same date at approximately 10:30 p.m. The permit premises were closed. (ATC File)

5. On Wednesday, August 12, 2009 at 1:55 p.m., Officers Thomas and Canal returned to the permit premises to issue a Notice of Violation. The bartender, Mr. Riet, was approached and the Officers identified themselves by badges and names. Officer Thomas asked Mr. Rieth for his employee permit. He stated that he did not have an employee permit and that he did not realize that he had to have one. Officer Thomas explained to Mr. Rieth that he was required to have an employee permit and that the permit premises were required to maintain records of all employee permits. He stated that he understood. He was further informed of the steps he needed to take to obtain an employee permit. (ATC File)
6. Officer Thomas informed Mr. Rieth that on Monday, August 10<sup>th</sup>, at 7:34 p.m., the permit premises had failed an Alcohol Compliance Project check committing violations of Sales of Alcoholic Beverages to a Minor and Allowing a Minor to Loiter. Mr. Rieth was shown a digital photograph of Minor Nathan and told his age and date of birth. Officer Thomas then issued a Notice of Violation to the permit premises for Sales of Alcoholic Beverages to a Minor; Allowing a Minor to Loiter: No Employee Permit; and Record of Employee Permit Required. (ATC File)
7. On December 14, 2009, Oakland Lanes, Inc., by Kenneth Jackson, admitted all charges and paid a fine of \$650. (ATC File)
8. Kenneth Jackson and his late wife have owned and operated the Oakland Lanes since March 1984, and prior to these compliance checks had never had a violation relating to this alcohol permit. Mr. Jackson offered no excuse for the violation and apologized for the violations and promised no future violations would occur. He explained what events had occurred over the preceding eighteen (18) months. (ATC Hearing)
9. The general manager of the business who had been an employee of the permittee for twenty four (24) years resigned when he learned he had been diagnosed with lymphoma. In addition, Mr. Jackson's wife became ill in the winter of 2005 and eventually passed away two years later. Mr. Jackson then hired a person (Mr. Rieth) to do the janitorial work during the day while he (Mr. Jackson) did the bookkeeping and ran business related errands. (ATC File; ATC Hearing)
10. Mr. Rieth was told not to serve any type of alcoholic beverages as that was not a part of his job description. When the violations occurred and Mr. Jackson became aware of them, Mr. Rieth was fired. (ATC Hearing)
11. The weight of the evidence indicates that Kenneth Jackson is a hands-on business owner who is knowledgeable of the day-to-day operation of the business at Oakland Lanes and who has taken steps to assure that no further violations of sales to minors occur. (ATC File; ATC Hearing)
12. The weight of the evidence indicates that Kenneth Jackson's health condition on the day of the local board hearing adversely affected his ability to appropriately respond to local board members' inquiries. (ATC Hearing)

14. The weight of the evidence indicates that Kenneth Jackson is President, majority stockholder, business owner, manager and the person in charge of the day-to day operations of the applicant/permittee. (ATC File; ATC Hearing)
15. The weight of the evidence indicates that Kenneth Jackson is of good moral character and good repute and held in high esteem by the members of his community. (ATC File; ATC Hearing)
16. The evidence establishes that the permittee, individually and by and through its relationship with its employee, Mr. Rieth, engaged in the following conduct:
  - a) Failing a compliance check by serving a minor alcoholic beverages and allowing a minor to loiter, while at the same time acting without a valid permit.
  - b) Allowing an employee to act as a bartender without an employee permit and failing to keep records of employee permits.
17. The weight of the evidence and the burden of proof indicate that, although the applicant has had the above violations, steps have been taken, including employee dismissal, to rectify the cause of these violations.
18. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

#### **IV. CONCLUSIONS OF LAW**

1. The ATC has jurisdiction over this matter pursuant to Ind. Code 7.1-1-2-2; Ind. Code 7.1-2-3-9.
2. The permit application was properly submitted pursuant to Ind. Code 7.1-3-1-4.
3. The ATC is commissioned to act upon proper application. *Id.*
4. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the ATC, including a public hearing. 905 IAC 1-36-7(a); Ind. Code 7.1-3-19-11.5
5. The Hearing Judge may consider as evidence all documents in the ATC File, including the transcript of proceedings and exhibits before the Local Board. 905 IAC 1-36-7(a)
6. The Hearing Judge may also consider as evidence any codes and standards that have been adopted by an agency of this state. 905 IAC 1-36-8(e)
7. Evidence at the hearing was received in accordance with the Indiana Administrative Code and the Commission's rules. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noted in the proceeding. 905 IAC 1-37-11(e); Ind. Code 4-21.5-3-27(d)

8. Oakland Lanes, Inc. d/b/a Oakland Lanes, permit #RR20-19545, is an applicant for renewal of an ATC Type 112, beer and wine permit.
9. The Commission, in its absolute discretion, shall issue, suspend or revoke, except as otherwise provided in Title 7.1, a retailer's or dealer's permit of any type. Ind. Code 7.1-3-19-1
10. The Commission may investigate in any manner it deems best to enable it to act upon the application in a particular case. The Commission may grant or refuse the application accordingly as it deems the public interest will be served best. The action of the Commission for a retailer's or dealer's permit of any type shall be final. Ind. Code 7.1-3-19-10
11. In determining an applicant's, or permittee's eligibility to hold, renew or continue to hold a permit, particularly whether the applicant is of good moral character and of good repute, the Commission shall consider whether acts or conduct of the applicant, permittee or his employees or agents, would constitute action or conduct prohibited by the Indiana Penal Code (IC 35-41-1-1 *et. seq.*), or a criminal offense under the laws of the United States. The Commission may also consider the esteem in which the person is held by members of his community, and such assessment of his character as may reasonably be inferred from police reports, evidence admitted in court and commission proceedings, information contained in public records and other sources of information as permitted by I.C. 7.1-3-19-8 and I.C. 7.1-3-19-10. 905 IAC 1-27-1
12. The definition of a permittee includes an agent, a servant or other person acting on behalf of the permittee, whenever a permittee is prohibited from doing an act under this title. Ind. Code 7.1-1-3-30(b)
13. A minor means a person less than twenty-one (21) years of age. Ind. Code 7.1-1-3-25
14. It is unlawful for a person to recklessly, knowingly or intentionally sell, barter, exchange, provide or furnish an alcoholic beverage to a minor. Ind. Code 7.1-5-7-8
15. It is unlawful for a permittee to recklessly permit a minor to be in the prohibited place beyond a reasonable time in which an ordinary, prudent person can check identification, or confirm the age of a patron. Ind. Code 7.1-5-7-10(b)
16. A prohibited place includes a tavern, a bar, or other public place where alcoholic beverages are sold, bartered, exchanged, and given away, provided or furnished. Ind. Code 7.1-5-7-10(a)
17. Minors are not allowed on retail permit premises, except as provided in IC 7.1-5-7-11 and IC 7.1-5-7-13. See also 905 IAC 1-15.2-1 and 905 IAC 1-15.2-2
18. It is unlawful for a person to act as a clerk in a package liquor store, or as a bartender, waiter, waitress, or manager for a retailer permittee unless that person has applied for and been issued the appropriate permit. Ind. Code 7.1-5-6-3

19. A record of employee permits shall be kept by the permittee and be available for examination by representatives of the ATC. 905 IAC 1-12.1-2
20. Mr. Rieth, was an agent or other person acting on behalf of the permittee, Oakland Lanes Inc., d/b/a Oakland Lanes, during the times they were interacting with the Excise Officers regarding the permit premises and the violations charged. Ind. Code 7.1-1-3-30(b)
21. A permit is fully expired and null and void at the end of the term for which it is issued. Ind. Code 7.1-3-1-3
22. The applicant has proven that it is of good moral character, of good repute and is held in high esteem by the members of the community. Ind. Code 7.1-3-19-8 and 7.1-3-19-10; 905 IAC 1-27-1
23. Oakland Lanes, Inc. has submitted substantial evidence to prove that it has taken proper action to insure that future compliance check violations do not occur.
24. The Local Board approved this permit renewal with sufficient evidence that supports a finding that this permit renewal request should be approved.
25. Any Conclusion of Law may be considered a Finding of Fact, if the context so warrants.

Therefore, it is ORDERED, ADJUDGED AND DECREED that the finding of the Local Board to approve this application for renewal **for a one year period** was based on substantial evidence and must be upheld.

It is hereby further ORDERED, ADJUDGED AND DECREED that the evidence adduced at the LB Hearing and the Appeal Hearing was in favor of the Applicant, and the appeal of Oakland Lanes, Inc., d/b/a Oakland Lanes for renewal of this Type 112 permit, Permit No. RR20-195454, applied for at its Elkhart, Indiana permit location is hereby GRANTED FOR A PERIOD OF ONE YEAR.

DATED: \_\_\_\_\_

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E. Edward Dunsmore  
Hearing Judge